IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 24794 of 2004(B)

PETITIONER:

POTTANAMCHALI MUHAMMED HAJI,
S/O. ALIKUTTY HAJI, OLAMATHIL,
PULPATTA, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

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1. THE DEPUTY TAHSILDAR (R.R.),
TALUK OFFICE ERNAD, MANJERI,
MALAPPURAM DISTRICT.

2. THE TAHSILDAR, ERNAD, MANJERI,
MALAPPURAM DISTRICT.

BY G.P. SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE NOTICE RECEIVED BY PETITIONER DT.5.6.2002 FROM R2.

P2: TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R2 DT.22.6.2002.

P3: TRUE COPY OF RR NOTICE ISSUED TO THE PETITIONER BY R1 DT.23.7.2004.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24794 of 2004

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Dated this the 27th day of November, 2007.

JUDGMENT

The petitioner is challenging recovery proceedings for recovery of luxury tax demanded in respect of the residential building constructed by the petitioner. Dispute pertains to plinth area of the building. While the case of the petitioner is that the plinth area is below 278.7 sq. metres that attracts luxury tax, the Tahsildar has in the counter affidavit stated that the plinth area was found to be 298.32 sq. metres which is 20 sq. metres above the limit that attracts luxury tax. It is conceded that the petitioner has paid building tax for the building assessed on the same plinth area without dispute. However, counsel rightly pointed out that payment of building tax does not act as estoppel against the petitioner, more so, when luxury tax is a recurring liability. I do not think the payment of building tax without contest stands in the way of petitioner contesting luxury tax liability, if the plinth area is below the limit that attracts luxury tax under Section 5A of the Kerala Building Tax Act. However, since the second respondent has filed counter affidavit stating that measurement was taken and actual plinth area is 298.32 sq. metres, I give one more opportunity to the petitioner to

measure the plinth area by himself or through a qualified person engaged by him and satisfy the correctness of the assessment. If petitioner is satisfied, petitioner can clear the arrears of luxury tax and give up the challenge. However, if petitioner is not satisfied about the measurement, petitioner can request to the second respondent to get the plinth area measured by Assistant Executive Engineer, PWD of the area. If petitioner makes a request along copy of this judgment and measurement report prepared by the petitioner, second respondent will get the building measured by the Assistant Executive Engineer, PWD of the area who will treat the request of second respondent as direction by this court. However, if the plinth area on measurement by the Assistant Executive Engineer is found to be above the limit that attracts luxury tax, then the petitioner will be liable to pay cost which is fixed at rupees five thousand, which the second respondent will recover along with luxury tax arrears.

C.N.RAMACHANDRAN NAIR
Judge

pms